

Notice of Allowability

Application No.

10/614,481

Examiner

Lorraine Spector, Ph.D.

Applicant(s)

BUBLOT ET AL.

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to amendment filed 12/14/2006.
2. ☒ The allowed claim(s) is/are 21-23, 25-27, 29, 44 renumbered as 2-8 and 1, respectively.
3. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some* c) ☐ None of the:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

* Certified copies not received: _____.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

4. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
5. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
- (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
- 1) ☐ hereto or 2) ☐ to Paper No./Mail Date _____.
- (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date _____.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
6. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

- | | |
|--|---|
| 1. <input type="checkbox"/> Notice of References Cited (PTO-892) | 5. <input type="checkbox"/> Notice of Informal Patent Application |
| 2. <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 6. <input type="checkbox"/> Interview Summary (PTO-413),
Paper No./Mail Date _____ |
| 3. <input type="checkbox"/> Information Disclosure Statements (PTO/SB/08),
Paper No./Mail Date _____ | 7. <input checked="" type="checkbox"/> Examiner's Amendment/Comment |
| 4. <input type="checkbox"/> Examiner's Comment Regarding Requirement for Deposit
of Biological Material | 8. <input checked="" type="checkbox"/> Examiner's Statement of Reasons for Allowance |
| | 9. <input type="checkbox"/> Other _____ |

Attachment to Notice of Allowability

EXAMINER'S AMENDMENT

An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in a telephone interview with Thomas Kowalsky on 3/12/2007.

The application has been amended as follows:

Claims 20, 24 and 30 have been cancelled.

Claims 21 and 22 have been rewritten as follows:

--21. An isolated equine GM-CSF polypeptide comprising the amino acid sequence as set forth in SEQ ID NO: 9.

22. An isolated equine GM-CSF polypeptide which has an equivalent adjuvant effect, immunity stimulant activity, and species-specificity as that of the equine GM-CSF as set forth in SEQ ID NO: 9 wherein the isolated equine GM-CSF polypeptide is encoded by an isolated DNA molecule that is at least 90% identical to SEQ ID NO: 8.--

In claim 25, following " SEQ ID NO: 8", the entire remainder of the claim, beginning with "and encodes..." has been deleted.

In claim 26, following " SEQ ID NO: 8", the entire remainder of the claim, beginning with "and encodes..." has been deleted.

In claim 27, second line, prior to the word "excipient", the word --diluent-- has been inserted.

Also in claim 27, "claims 20-26 or 44" has been amended to read --claims 21-23, 25-26 or 44--.

In claim 29, prior to "the composition of claim 27", the phrase --an effective amount of-- has been inserted.

Claim 44 has been rewritten as follows:

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--44. An isolated equine GM-CSF polypeptide consisting of the amino acid sequence of SEQ ID NO: 9.--

Reasons for Allowability

The following is an examiner's statement of reasons for allowance: In the conversation with Mr. Kowalsky made of record above, the Examiner indicated that because claims to a fusion protein were issued in parent patent 6,645,740, that obviousness-type double patenting exists between those claims and the claims herein that "comprise" equine GM-CSF. Mr. Kowalsky agreed to file the appropriate terminal disclaimer.

The terminal disclaimer filed on 3/14/2007 disclaiming the terminal portion of any patent granted on this application which would extend beyond the expiration date of U.S. Patent No. 6,645,740 has been reviewed and is accepted. The terminal disclaimer has been recorded.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

Conclusion

Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Lorraine M. Spector. Dr. Spector can normally be reached Monday through Friday, 9:00 A.M. to 3:00 P.M. at telephone number 571-272-0893.

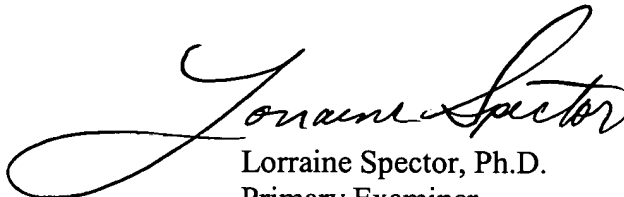
If attempts to reach the Examiner by telephone are unsuccessful, please contact the Examiner's supervisor, Ms. Brenda Brumback, at telephone number 571-272-0961.

Certain papers related to this application may be submitted to Technology Center 1600 by facsimile transmission. The faxing of such papers must conform with the notices published in the Official Gazette, 1156 OG 61 (November 16, 1993) and 1157 OG 94 (December 28, 1993) (see 37 C.F.R. § 1.6(d)). NOTE: If Applicant does submit a paper by fax, the original signed copy should be retained by applicant or applicant's representative. NO DUPLICATE COPIES SHOULD BE SUBMITTED so as to avoid the processing of duplicate papers in the Office.

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Official papers filed by fax should be directed to **571-273-8300**. Faxed draft or informal communications with the examiner should be directed to **571-273-0893**.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A handwritten signature in cursive script, reading "Lorraine Spector". The signature is written in black ink and is positioned above the printed name and title.

Lorraine Spector, Ph.D.
Primary Examiner